

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 TONY LEE SMITH,)
9 Petitioner,) 2:13-cv-00135-GMN-GWF
10 vs.)
11 CLARK COUNTY SHERIFF,) ORDER
12 Respondent.)
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14 The petitioner, proceeding in proper person without counsel, has presented the Court with a
15 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma*
16 *pauperis*. ECF. No. 1.

17 The petitioner's application to proceed *in forma pauperis*, including the financial certificate,
18 establishes that the petitioner qualifies for *in forma pauperis* status. He shall be granted leave to proceed
19 *in forma pauperis*, and shall not be required to pay the filing fee for his habeas corpus petition. The
20 petition will be ordered filed and docketed.

21 As required by Rule 4 of the Rules Governing Section 2254 Cases in the United States District
22 Courts, a preliminary review of the petition and attachments indicates that this Court lacks jurisdiction
23 to entertain this petition under 28 U.S.C. § 2254.

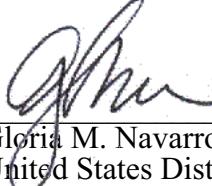
24 28 U.S.C. § 2254 provides that this Court will entertain an application for a writ of habeas corpus
25 “in behalf of a person in custody pursuant to the **judgment of a State court**” where there are grounds
26 indicating that the petitioner was convicted in violation of the “Constitution or laws or treaties of the

1 United States.” 28 U.S.C. § 2254(a) (emphasis added). From the face of this petition it is evident that
2 petitioner is a pre-trial detainee who has not yet suffered a conviction.¹

3 **IT IS THEREFORE ORDERED** that the application to proceed *in forma pauperis* (ECF No.
4 1) is **GRANTED**. The Clerk shall **file** the petition.

5 **IT IS FURTHER ORDERED** that the petitioner is **DISMISSED** for lack of subject matter
6 jurisdiction. The Clerk shall enter judgment accordingly.

7 Dated this 28th day of January, 2013.

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Gloria M. Navarro
United States District Judge

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23 ¹ Petitioner apparently has a pre-trial petition for writ of habeas corpus on file with the state
24 district court which attacks pre-trial proceedings and the sufficiency of the charging document. The
25 Nevada Supreme Court declined to entertain his petition for writ of mandamus seeking an order directing
26 the district court to address that petition. *See* Exhibits A and B to the petition. Thus, petitioner has not
exhausted his claims before the state court, another requirement for obtaining relief under 28 U.S.C. §
2254. *See* 28 U.S.C. § 2254(b)(1).